

CONDOMINIUM REVIEW COMMITTEE
Real Estate Commission
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes.

Date: December 14, 2000

Time: 10:00 a.m.

Place: Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Mitchell Imanaka, Chair
Peter Rice, Vice Chair
Charles Aki, Member
Michael Ching, Member
John Ohama, Member
Alfredo Evangelista, Member
Iris Okawa, Member
Patricia Choi, Member

Calvin Kimura, Supervising Executive Officer
Cynthia Yee, Senior Condominium Specialist
Gina Watumull, Condominium Specialist
Lorene Arata, Condominium Specialist
June Kamioka, Program Specialist
Shari Wong, Deputy Attorney General
Tammy Norton, Recording Secretary

Others: Marc Greenwell, Condominium Owner
David Bettencourt, Esq.
Tracey Wiltgen, The Mediation Center of the Pacific

Excused: Casey Choi, Member

Call to Order: Chair Imanaka called the meeting to order at 10:00 a.m., at which time quorum was established.

Chair's Report: No report was presented.

Condominium
Specialist's

Minutes

Report: Upon a motion by Commissioner Rice, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the minutes of the November 15, 2000 Condominium Review Committee meeting as circulated.

Condominium
Governance and
Management:

AOAO / CMA / CHO Registrations

Specialist Watumull reported that as of November 30, 2000, 1,406 AOAOs have successfully registered. Specialist Watumull further reported that 108 CMAs and 119 CHOs are also currently registered.

Upon a motion by Commissioner Rice, seconded by Commissioner Aki, it was voted on and unanimously carried to recommend approval to ratify issuance of effective registration dates for Associations of Apartment Owners through November 30, 2000 for the 1999 - 2001 Registration. The associations are as follows:

Cal-Cam Centre III	11/16/00
Kupono Hale	11/29/00
Nenehiwa Gardens	11/30/00
The Royal Manoa	11/13/00
Waimea Town Plaza	11/21/00

2001-2003 AOAO Reregistration & Fidelity Bond Exemption Applications

Specialist Watumull reported that effective June 30, 1997, the AOAO registration period was changed from an annual to a biennial registration period which begins on July 1 of odd-numbered years and terminates on June 30 of odd-numbered years. By law, the Commission must prescribe a deadline prior to the termination date for submission of completed AOAO reregistration applications.

To streamline the registration process, staff requests that the Commission prescribe a generic AOAO biennial reregistration deadline.

Upon a motion by Commissioner Ohama, seconded by Commissioner Patricia Choi, it was voted on and unanimously carried to recommend approval for the Commission to prescribe a generic AOAO biennial reregistration deadline for the submission of completed AOAO registration applications of: "the last non-holiday week day in May of an odd-numbered year."

Specialist Watumull further reported that at the November 25, 1998 REC meeting, the Commission delegated to staff the approval of first-time and re-applications for three types of AOAO fidelity bond exemption applications. Staff is requesting amendments to the conditions and terms for the Sole Owner Bond Exemption to include sole owner LLCs and sole owner LLPs, which are now required to register with DCCA. Staff also requests that applicants for the 100% Commercial Use Bond Exemption and the Twenty or Fewer Apartments Bond Exemption be allowed to self-certify compliance with the conditions and terms to deregulate and streamline the AOAO reregistration process.

Upon a motion by Commissioner Rice, seconded by Commissioner Ohama, it was voted on and unanimously carried to **Recommend approval** to amend the conditions and terms to obtain the 3 types of AOAO fidelity bond exemptions as follows:

AOAO Sole Owner Bond Exemption: Where the applicants certify consent to the conditions and terms prescribed by the Commission, recommend approval to delegate to staff the approval of first-time and re-applications for an AOAO fidelity bond exemption where all

condominium apartments are owned by a sole individual, sole corporation, sole partnership, sole Limited Liability Company ("LLC"), or sole Limited Liability Partnership ("LLP"), subject to the following conditions and terms:

- 1) That all apartments shall continue ownership by the sole individual, corporation, partnership, LLC, or LLP throughout the registration period;
- 2) That if the sole owner is a corporation, partnership, LLC, or LLP, the entity shall be registered and in good standing with the Business Registration Division of the Department of Commerce and Consumer Affairs;
- 3) That the AOA is established;
- 4) That the AOA and the applicant shall comply with all financial controls as prescribed in the fidelity bond exemption application;
- 5) That the AOA and the applicant shall comply with Chapter 514A, HRS, and Chapter 107, HAR;
- 6) That the AOA and the applicant shall be responsible for the subject AOA registration and fidelity bond exemption, and the applications for AOA registration and for fidelity bond exemption are signed by the sole owner individual, officer of the corporation, general partner of the partnership or LLP, or manager or member of the LLC, AND by an officer of the AOA;
- 7) That the AOA and the applicant shall immediately report to the Commission any changes in the ownership of the apartments or other material changes that affect the fidelity bond exemption;
- 8) That the conditional registration and fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial reregistration deadline; and
- 9) That the fidelity bond exemption and the AOA registration shall terminate if the AOA or the applicant is not in compliance with any of the above conditions.

That the Commission delegates to staff approval of the conditional initial and reapplications for registration and fidelity bond exemption in which there have been no change in circumstances and the applicant has complied with the conditions and terms above. These terms and conditions shall be incorporated into the proposed rules of Chapter 107, HAR.

AOAO 100% Commercial Use Bond Exemption: Where the applicants certify consent to the conditions and terms prescribed by the Commission, recommend approval to delegate to staff the approval of first-time and re-applications for an AOA fidelity bond exemption where all condominium apartments are 100% commercial use, subject to the following conditions and terms:

- 1) The AOA shall be managed by a registered condominium managing agent;
- 2) The AOA shall comply with its current financial controls, which include:
 - a) the board of directors shall promptly and diligently review all AOA fund account statements from the condominium managing agent;
 - b) the AOA shall conduct an annual audit of its funds, and
 - c) the apartments shall remain 100% commercial use;
- 3) The AOA shall comply with one of the following two requirements:
 - a) The board of directors shall adopt a resolution acknowledging its request for this fidelity bond exemption and require two signatures for checks in excess of \$2,500; or
 - b) Each apartment owner shall sign a resolution acknowledging the apartment owners' request for, and approval of, this fidelity bond exemption;

- 4) With the exception of the fidelity bond requirement, the AOA and its board of directors shall comply with the provisions of Chapter 514A, HRS, and Chapter 107, HAR;
- 5) That the conditional registration and fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial reregistration deadline; and
- 6) Failure to abide by these conditions and terms shall result in termination of the fidelity bond exemption and the association registration.

That the Commission delegates to staff approval of the conditional initial and reapplications for registration and fidelity bond exemption in which there have been no change in circumstances and the applicant has complied with the conditions and terms above. These terms and conditions shall be incorporated into the proposed rules of Chapter 107, HAR.

AOAO Twenty or Fewer Apartments Bond Exemption: Where the applicants certify consent to the conditions and terms prescribed by the Commission, recommend approval to delegate to staff the approval of first-time and re-applications for an AOA fidelity bond exemption where the condominium project contains twenty or fewer apartments, subject to the following conditions and terms:

- 1) The AOA, through its board of directors, shall certify to the Commission that it has obtained recent letters from three (3) separate insurance carriers confirming that the AOA is unable to obtain fidelity bond coverage;
- 2) Projects with 6 to 13 apartments shall have either reserves of \$10,000 or less and a total annual budget of \$15,000 or less, OR a total annual budget of \$25,000 or less AND at least two of the following:
 - a) Retains a CMA;
 - b) Separate operating and reserve accounts with two signatures required on reserve account;
 - c) Operating account with two signatures for checks in excess of \$500;
 - d) Board review of account statement from CMA;
 - e) Board review of account statement from financial institution;
 - f) Conducts an annual audit/review/compilation;
 - g) Automatic payment by financial institution of utilities and regularly recurring expenses;
 - h) Project is totally commercial or industrial use with no residential use apartments;
- 3) Projects with 14 to 20 apartments shall have either reserves of \$20,000 or less and a total annual budget of \$30,000 or less, OR a total annual budget of \$50,000 or less AND at least three of the following:
 - a) Retains a CMA;
 - b) Separate operating and reserve accounts with two signatures required on reserve account;
 - c) Operating account with two signatures for checks in excess of \$1,000;
 - d) Board review of account statement from CMA;
 - e) Board review of account statement from financial institution;
 - f) Conducts an annual audit/review/compilation;
 - g) Automatic payment by financial institution of utilities and regularly recurring expenses;
 - h) Project is totally commercial or industrial use with no residential use apartments; and

- 4) That the conditional registration and the fidelity bond exemption expire at the conclusion of the biennial registration period and must be reapplied for with each biennial registration period, and shall be submitted at least 30 days prior to the biennial registration deadline.

That the Commission delegates to staff approval of the conditional initial and reapplications for registration and fidelity bond exemption in which there have been no change in circumstances and the applicant has complied with the conditions and terms above. These terms and conditions shall be incorporated into the proposed rules of Chapter 107, HAR.

Mediation and Arbitration

Specialist Watumull reported that The Mediation Center of the Pacific, Inc. (MCP) has submitted a proposal to request subsidy from the Condominium Education Fund for mediation training. She further noted that the Commission recently approved entering into new mediation contracts with three vendors on the neighbor islands, two from the Big Island and one from Kauai.

Tracey Wiltgen, Executive Director of MCP, was present to answer any questions the committee may have regarding the proposal and budget to train mediators.

Vice Chair Rice questioned what the per diem under travel costs would include.

Ms. Wiltgen replied that the per diem was intended for meals for those mediators which would be required to fly to Kauai to attend the training sessions.

Vice Chair Rice informed the committee members that incidental costs are included in the contract between MCP and the Commission for training of mediators.

Upon a motion by Vice Chair Rice, seconded by Commissioner Ohama, it was voted on and unanimously carried to recommend approval to accept the written Proposal and Budget submitted by The Mediation Center of the Pacific, Inc. ("MCP") dated November 30, 2000 to provide mediator training services for the resolution of condominium-related disputes on Kauai and Hawaii pursuant to the submitted Proposal and Budget, and the terms and conditions as set forth in the Agreement For Consultant Services dated December 27, 1991, and the Supplemental Agreement No. 3 dated September 16, 1996 ("Agreements") between the Commission and MCP (fka Neighborhood Justice Center of Honolulu, Inc.). The Commission agrees to pay no more than a total of \$3,643.00, subject to availability of Condominium Management Education Funds.

Education Calendar - Updated calendar of condominium events circulated for information. This information is also provided on the Commission's webpage.

Chair Imanaka reported that CAI Hawaii has submitted their 2001 seminar schedule. The Commission has not received any requests for subsidy to date. REB staff is working closely with CAI Hawaii on the offering of condominium seminars.

Case Law Review Program

Articles entitled "Discrimination Triggers Punitive Damage Award under Federal Fair Housing Act" and "Association's Attempt To Collect Interest and Attorney's Fees is Violation of Debt Collection Act" from the November 2000 issue of *Community Association Law Reporter* were distributed for informational purposes.

Condominium
Project
Registration:

Condominium Project Registration - Public Reports Issued

Upon a motion by Commissioner Ohama, seconded by Commissioner Aki, it was voted on and unanimously carried to recommend approval to ratify issuance of effective dates for public reports for the month of November 2000 as follows:

Proj No	Project Name	Project Address	TMK #	Report	Date
4450	2532 PUU ROAD CONDOMINIUM	2532 PUU RD KALAHEO HI 96741	(4)2-03-011:013	Suppl 1	11/29/00
4466	AVALON PHASE 3	91-1024 LAULAUNA ST EWA BEACH HI 96706	(1)9-01-102:016	Final	11/01/00
4477	AVALON PHASE 4	91-1022 LAULAUNA ST EWA BEACH HI 96706	(1)9-01-102:016	Final	11/29/00
4478	CORTEBELLA PHASE 1	91-1329 KEAUNUI DR EWA BEACH HI 96706	(1)9-01-010:048	Final	11/14/00
1856	COUNTRY CLUB HAWAII	121 BANYAN DR HILO HI 96720	(3)2-01-005:020	Suppl 2	11/09/00
4465	DESTINY AT MILILANI - PHASE III	KUALOA ST MILILANI HI 96789	(1)9-05-002:001	Final	11/13/00
4528	HAWEALANI CONDOMINIUM	2159 ILIILI RD KIHEI HI 96753	(2)3-09-005:015	Final	11/22/00
4515	KE'AINA KAI TOWNHOMES, INCREMENT 9	91-110 KAILEOLE'A DR EWA BEACH HI 96706	(1)9-01-012:042	Final	11/13/00
4500	KONA FARM HOUSE	81-1073E CAPTAIN COOK RD CAPTAIN COOK HI 96704	(3)8-01-022:019	Final	11/24/00
4518	KUAKINI VILLAS	LOT 7 KUAKINI HWY KAILUA-KONA HI	(3)7-05-018:028	Prelim	11/28/00
4505	LAKESIDE VILLAS I	5269 LIKINE ST AIEA HI 96818	(1)1-01-058:027	Final	11/17/00
4421	MALUHIA AT WAILEA	3400 WAILEA ALANUI DR WAILEA HI 96753	(2)2-01-008:062	Final	11/27/00
4350	MAUI KAMAOLE PHASE III - CLUSTER M	2777 S KEHEI RD KIHEI HI 96753	(2)3-09-004:082	Final	11/01/00
4342	OHAI MAUKA ESTATES LOT 12 CONDO PROJ	POR OF LOT A, LOT 12 HOLUALOA HI	(3)3-07-023:018	Suppl 1	11/13/00
4365	OHAI MAUKA ESTATES LOT 14 CONDO PROJ	POR OF LOT A, LOT 14 HOLUALOA HI 96743	(3)7-07-023:020	Suppl 1	11/24/00
4511	PETERSON OHANA CONDO PROJ	WAIKOEKOE & LALAKEA HAMAKUA HI	(3)4-07-007:087	Final	11/16/00
4503	POLOHILANI PLACE CONDO	3032 & 3033 POLOHILANI PL HONOLULU HI 96817	(1)2-02-043:065	Final	11/08/00
3561	TERRACES MANELE BAY PHASE 11 THE	KAPIHA'A PL LANAI HI 96763	(2)4-09-022:001	Suppl 3	11/03/00
3117	VILLAS AT KOELE PHASE I THE	PUULANI PL/NINTH ST LANAI CITY HI 96763	(2)4-09-018:002	Suppl 2	11/17/00
4497	VILLAS ON THE PRINCE	QUEEN EMMA DR	(4)5-03-011:001	Prelim	11/14/00

4376	WOODCREEK	PRINCEVILLE HI 96722 WIKAO ST MILILANI HI 96789	(1)9-05-002:036 Suppl 1 11/08/00
Preliminary Reports:	2		
Contingent Reports:	0		
Final Reports:	12		
Supplementary Reports:	7		
Total:	21		

***Ka Nu Hou* “The News” (October 2000)**

The article entitled “Bill Introduced IN Congress To Ease Conversions of Cooperatives Into Condominiums” from the October 2000 issue of *Ka Nu Hou* “the News” was distributed for informational purposes.

Program of Work: **Meetings and Symposium**

Chair Imanaka reported that the Commission may wish to consider hosting a biennial condominium symposium whereby experts in the field of condominiums are invited to share their experience and knowledge with the local community and also gain insight into condominium issues.

Neighbor Island Outreach

Vice Chair Rice reported attending a condominium meeting on the island of Maui coordinated by the Condominium Council of Maui (CCM). CCMs meetings focuses on training condominium managers and board members. It was a three hour session. A CAI video and CAI handouts were used during the first two hours of the session. For the remaining hour members of CCM spoke of their own understanding of the condominium law. Vice Chair Rice spoke to the members about utilizing the Commission in conducting such programs. Some members claimed that it was too much red tape to work with a State agency. Vice Chair Rice volunteered to assist CCM in working with the Commission.

SEO Kimura reported that CCM is the only long term neighbor island group that the Commission is aware of and that the Commission has provided their organization with speakers in the past upon request.

Interactive Participation with Organizations

Specialist Yee reported that she and Specialist Watumull attended CAI Hawaii’s Annual Meeting where they were made aware of CAI Hawaii’s legislative agenda for 2001. Chair Imanaka, SEO Kimura and Specialist Yee also met with their incoming Co-Chair to discuss the legislative agenda. Initially CAI-Hawaii proposed either a moratorium on contributions or elimination of the condominium management education fund. After meeting with the incoming Co-Chair of CAI-Hawaii it seems that they will not be introducing any legislation relating to the fund. Still on CAI Hawaii’s agenda is child care legislation, limited priority lien, recodification efforts and city bills focusing on ordinances and municipal issues.

Condominium Reference Library

Specialist Yee informed the committee that she has requested copyright permission/license for CAI and CAI Hawaii Chapter publications from CAI National and the Hawaii chapter. To date we have not received a response.

CMEF Budget & Finance Report:

No report presented.

Condominium Organizations Forum:

There were no comments, recommendations or concerns received from the following: Community Associations Institute Hawaii Chapter, Alakahi Foundation, Hawaii Council of Association of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Hawaii State Bar Association/Real Property & Financial Services Section, Land Use Research Foundation, Condominium Council of Maui, Hawaii Association of Realtors/Institute of Real Estate Management Hawaii Chapter/ Oahu Arm Committee, others.

Open Forum:

Mr. Marc Greenwell, a condominium owner was present to address the committee. Mr. Greenwell questioned whether there was any definitive report or law that defines exactly what a common element is. Mr. Greenwell stated that he is a condominium owner who has an upstairs neighbor with bad plumbing, both inside and outside the wall. Mr. Greenwell questioned whether stems behind a shower, valves coming out of walls and rings under the toilet are considered common elements. Mr. Greenwell requested a definitive answer as to what is common and what is private.

Chair Imanaka questioned how many apartments in the project and was informed by Mr. Greenwell that there are 49 apartments in a high-rise condominium project.

Chair Imanaka informed Mr. Greenwell that Chapter 514A, the condominium property regime law speaks of common elements, but leaves the definition to the developer of the project. The declaration for the individual project should define what constitutes an apartment and a common element. An attorney should be able to help Mr. Greenwell review the condominium project documentation. In older projects, some items may not be well defined.

Mr. Greenwell stated that there was a famous case in Hawaii involving a hot tub. The plumbing, including the stems were changed. The matter was not settled at the developers level, but rather settled in court. Mr. Greenwell questioned how an owner is to know if a wax ring in a toilet has deteriorated. He further informed the committee that it is his understanding that the Real Estate Commission is responsible to define common elements. Mr. Greenwell stated that he does not like going to court and wants to see things written in simple, understandable language that is clear and concise. Many homeowners out there are very unaware and old documents are extremely vague.

Chair Imanaka informed Mr. Greenwell that the law as structured, permits people to define exactly what they want to be a common element and apartment. The law leaves to the drafter to define a common element. The declaration will include language on how to amend the declaration. An association with 75% vote has the power to amend the declaration. On a going forward basis, Chair Imanaka suggested that Mr. Greenwell request that the board amend the declaration to define "common elements." Chair Imanaka

informed Mr. Greenwell that the Commission is embarking on a recodification effort to look into issues such as this in an attempt to modernize the law.

Vice Chair Rice questioned as to what degree the insurance is involved.

Mr. Greenwell replied that the homeowners need something that is simple and definitive. Most condominiums are not flushed with cash therefore leaving the responsibility to fall on the shoulders of the owner. The homeowner then has to figure out where the responsibility lies.

Chair Imanaka questioned whether the association has conducted a reserve study.

Mr. Greenwell replied that the association found the leaks and repaired it, but needs the Real Estate Commission to set up something to assist all homeowners.

Chair Imanaka informed Mr. Greenwell that change resides in the owners of the condominium project to amend the declaration to further define the common elements. The Real Estate Commission cannot dictate exactly what is a common element and that he should seek the advice of an attorney who is versed in condominium law to assist in the drafting of amendments to the declaration.

Mr. Greenwell stated that it is very difficult to obtain 3/4 of the owners vote to make a change.

Chair Imanaka stated that in his own personal experience, a personal unit of his was flooded. His neighbor was not maintaining their pipes. The matter was settled through insurance carriers.

Chair Imanaka stated that the drafter of the declaration should be as precise as possible when defining the common elements of the project. There is always a catch all provision that may be used, "everything else is a common element," whereby, what is not considered an apartment is therefore a common element.

Vice Chair Rice referred back to Chair Imanaka's earlier question referring to whether a reserve study was done. Vice Chair Rice informed Mr. Greenwell that it is the AOA's responsibility to identify what needed to be replaced within a certain time. The reserve law is there to maintain an association.

Mr. Greenwell replied that the association does not operate under all of the Real Estate Commission's requirements. Mr. Greenwell further stated that he wants laws that average people can understand.

David Bettencourt, attorney for Mr. Greenwell, informed the committee that they are interested in finding out about the recodification plan. Mr. Bettencourt further informed the committee that he disagrees with Chair Imanaka and feels strongly that electricity, water, cable and maintenance repair should be defined by the State as common elements. Definitions in declarations are extremely vague and not capable of resolving a dispute. Mr. Bettencourt further inquired about how he can find out about upcoming meetings regarding the recodification plan.

Chair Imanaka stated that this is a new project that the Commission is embarking on. No special calendar or agenda has been set yet.

Mr. Bettencourt stated that he thought the Commission would need to report to the legislature this legislative session.

Chair Imanaka stated that the Commission is still in the interviewing process for the position. Internally, the Commission has been working on Chapter 107 draft rules.

SEO Kimura informed Mr. Bettencourt that the agenda for the Condominium Review Committee is filed with the Lt. Governor's office as required by law, six days prior to the date of the meeting. The schedule for the 2001 calendar year is also out, subject to change. Condominium organizations are also aware of the Commission and Committee meeting schedules.

Mr. Bettencourt stated that he would like to receive all notices with anything on changes to Chapter 514A.

SEO Kimura stated that the committee does not always know in advance of a meeting date if a recodification issue will be brought before the committee. It depends if someone shows up at the meeting and wishes to address the committee on an agenda item, just as you have today.

Chair Imanaka informed Mr. Bettencourt that a schedule and agenda regarding the recodification plan will be out at a later date.

Mr. Bettencourt questioned how long the Commission envisions the project to last, 2 or 3 years?

Chair Imanaka provided an initial guestimate to be about 4 to 5 years.

Next Meeting: January 12, 2001; 11:00 a.m.
Maui Board of REALTORS
Conference Room
441 Ala Makani Place
Kahului, MAUI

Adjournment: With no further business to discuss, Chair Imanaka adjourned the meeting at 10:44 a.m.

Respectfully submitted:

Cynthia M. L. Yee
Senior Condominium Specialist

January 12, 2001
Date

[x] Minutes approved as is.
[] Minutes approved with changes; see minutes of _____
CY/tn/